

CHAPTER 50-11.1 EARLY CHILDHOOD SERVICES

50-11.1-01. Purpose. The purpose of this chapter is to assure that children receiving early childhood services be provided food, shelter, safety, comfort, supervision, and learning experiences commensurate to their age and capabilities, so as to safeguard the health, safety, and development of those children.

50-11.1-02. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Authorized agent" means the county social service board, unless another entity is designated by the department.
2. "Child care center" means an early childhood facility where early childhood services are provided to nineteen or more children.
3. "County agency" means the county social service board in each of the counties of the state.
4. "Department" means the department of human services.
5. "Drop-in care" means the care of children on a one-time, occasional, or unscheduled basis to meet the short-term needs of families.
6. "Early childhood facility" means any facility where early childhood services are provided, whether the facility is known as a child care center, day care home, day care center, day nursery, family child care home, group child care home, preschool educational facility nursery school, kindergarten, child play school, progressive school, child development center, preschool, drop-in care center, or known by any other name.
7. "Early childhood services" means the care, supervision, education, or guidance of a child or children, unaccompanied by the child's parent, guardian, or custodian, which is provided in exchange for money, goods, or other services and is, or is anticipated to be, ongoing for periods of two or more hours per day for a part of three or more days per week. Early childhood services does not include:
 - a. Substitute parental child care provided pursuant to chapter 50-11.
 - b. Child care provided in any educational facility, whether public or private, in grade one or above.
 - c. Child care provided in a kindergarten which has been established pursuant to chapter 15.1-22 or a nonpublic elementary school program approved pursuant to subsection 1 of section 15.1-06-06.
 - d. Child care provided to preschool age handicapped children in any educational facility through a program approved by the superintendent of public instruction.
 - e. Child care provided in facilities operated in connection with a church, shopping center, business, or other establishment where children are cared for during periods of time not exceeding four continuous hours while the child's parent, guardian, or custodian is attending church services, shopping, or engaged in other activities, on or near the premises.

- f. Schools or classes for religious instruction conducted by religious orders during the summer months for not more than two weeks, Sunday schools, weekly catechism, or other classes for religious instruction.
 - g. Summer resident or day camps for children which serve no preschool age children for more than two weeks.
 - h. Sporting events, practices for sporting events, or sporting or physical activities conducted under the supervision of an adult.
 - i. Headstart programs that are federally funded and meet federal headstart standards.
 - j. Child care provided by a hospital by medical personnel within the physical structure of the hospital to children who are ill.
8. "Family child care home" means an occupied private residence in which early childhood services are provided for no more than seven children at any one time, except that the term includes a residence providing early childhood services to two additional school-age children during the two hours immediately before and after the schoolday and all day, except Saturday and Sunday, when school is not in session during the official school year.
 9. "Group child care home" or "group child care facility" means a child care facility where early childhood services are provided for eight through eighteen children or a facility, other than an occupied private residence, which serves fewer than eight children.
 10. "In-home provider" means any person who provides early childhood services to children in the children's home.
 11. "License" means the rights, authority, or permission granted by the department to operate a family child care home, group child care facility, child care center, drop-in care center, or preschool educational facility.
 12. "Multiple licensed facility" means an early childhood facility that provides more than one type of early childhood services.
 13. "Preschool educational facility" means a facility that offers early childhood services and follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled in the facility and that serves no child for more than three hours per day.
 14. "Registrant" means the holder of a registration document issued by the department in accordance with this chapter.
 15. "Registration" means the process whereby the department maintains a record of all in-home providers who have stated that they have complied or will comply with the prescribed standards and adopted rules.
 16. "Registration document" is a written instrument issued by the department to publicly document that the registrant has complied with this chapter and the applicable rules and standards as prescribed by the department.

50-11.1-02.1. Number of children in program - How determined. For the purpose of determining the number of children in an early childhood facility, all children of the operator or employees, present in the facility and under the age of twelve years, must be counted except for purposes of determining fire, safety, or zoning requirements.

50-11.1-02.2. Smoking prohibited in certain facilities. Smoking is not permitted in an early childhood facility at any time during which a child who receives early childhood services from that facility is present and receiving services at that facility.

50-11.1-03. Operation of family child care home, group child care facility, preschool educational facility, and child care center - License required - Fees.

1. A license for a family child care home is required if early childhood services are provided for four or more children ages twenty-four months and under or six or more children at any one time. Those persons not required by this subsection to hold a family child care license may voluntarily apply for and receive such a license.
2. No person, partnership, firm, corporation, limited liability company, association, or nongovernmental organization may establish or operate a group child care facility, preschool educational facility, or child care center unless licensed to do so by the department. No governmental organization may establish or operate a group child care facility, preschool educational facility, or child care center without first certifying, to the department, that it has complied with all rules applicable to group child care facilities, preschool educational facilities, or child care centers.
3. An applicant for a license shall submit the following nonrefundable fees with the application:
 - a. The operator of a family child care home applying for a license shall pay an annual license fee of twenty dollars or if the license is issued for a two-year period, a fee of thirty-five dollars.
 - b. The operator of a group child care home applying for a license shall pay an annual license fee of twenty-five dollars or if the license is issued for a two-year period, a fee of forty-five dollars.
 - c. The operator of a preschool educational facility applying for a license shall pay an annual license fee of thirty dollars or if the license is issued for a two-year period, a fee of fifty-five dollars.
 - d. The operator of a child care center applying for a license shall pay an annual license fee of forty dollars or if the license is issued for a two-year period, a fee of seventy-five dollars.
 - e. The operator of a multiple licensed facility applying for a license shall pay an annual license fee of fifty dollars or if the license is issued for a two-year period, a fee of ninety-five dollars.
4. In addition to any criminal sanctions or other civil penalties which may be imposed pursuant to law, the operator of an early childhood facility who, after being given written notice by a representative of the department, continues to provide early childhood services without a license as required by this section is subject to a civil penalty of fifty dollars per day for each day of operation without such license. The civil penalty may be imposed by the courts or by the department through an administrative hearing pursuant to chapter 28-32.
5. All fees collected under subsection 3 must be paid to the department or the department's authorized agent and must be used to defray the cost, to the department or the department's authorized agent, of investigating, inspecting, and evaluating the applications or to provide training to providers of early childhood services.

50-11.1-03.1. Family child care home operator - Cardiopulmonary resuscitation certification. The operator of a family child care home must be certified in rescuer

cardiopulmonary resuscitation by the American heart association or the American red cross or by a similar cardiopulmonary resuscitation training program approved by the department.

50-11.1-04. Application for license - Prerequisites for issuance - License granted - Term. Applications for early childhood facility licenses must be made on forms provided, in the manner prescribed, by the department. The department or the department's authorized agent shall investigate the applicant's activities and proposed standards of care and shall make an inspection of all facilities applying for a license. The applicant for a license and the applicant's employees, and, if the license is for an occupied private residence, every person living or working in that residence, may be investigated in accordance with the rules adopted by the department to determine whether any of them has a criminal record or has had a finding of services required for child abuse or neglect filed against them. Except as otherwise provided, the department shall grant a license for the operation of an early childhood facility upon a showing that:

1. The premises to be used are in fit sanitary condition and properly equipped to provide for the health and safety for all children who may be received;
2. The persons in charge of the facility and their assistants are qualified to fulfill the duties required of them according to the provisions of this chapter and standards prescribed for their qualifications by the rules and regulations of the department;
3. The facility will be maintained according to the standards prescribed for its conduct by the rules and regulations of the department;
4. The facility has not had a previous license revoked within the one hundred eighty days prior to the date of the current application;
5. The facility has paid its license fees and any penalties assessed against the facility as required by section 50-11.1-03; and
6. The group child care or child care center facility maintains at all times during which early childhood services is provided at least one person who has received training and is currently certified in rescuer cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs that are approved by the department.

The license issued to the operator of an early childhood facility must be in force and effect for a period of not more than two years.

50-11.1-04.1. Operations of child care home - License. Repealed by S.L. 1985, ch. 526, § 18.

50-11.1-05. Operation of family day care home - Registration required - Issuance of registration certificate - Term. Repealed by S.L. 1981, ch. 491, § 19.

50-11.1-06. In-home provider - Registration voluntary - Issuance of registration certificate - Term. In-home providers may apply for a registration certificate from the department. The department or the department's authorized agent shall determine whether the standards have been met and shall issue or deny a registration certificate based upon that determination. Registration certificates for in-home providers must be in force and effect for not more than one year.

50-11.1-06.1. Conviction not bar to licensure - Exceptions. Conviction of an offense does not disqualify a person from licensure under this chapter unless the department determines that the offense has a direct bearing upon a person's ability to serve the public as the owner or proprietor of an early childhood facility or as an in-home provider, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

50-11.1-06.2. Carecheck registry - Child care providers - Background investigations - Fees. Placement in the carecheck registry is voluntary. To apply for placement in the carecheck registry, an in-home provider, a family child care home exempt from licensure, or a licensed early childhood services provider shall obtain two sets of that person's own fingerprints from a law enforcement agency or other local agency authorized to take fingerprints and shall request the agency to submit the fingerprints and a completed fingerprint card for each set to the division of children and family services of the department or to any division as determined appropriate by the department. If the division has no record of a determination of services required for child abuse or neglect, the division shall submit the fingerprints to the bureau of criminal investigation to determine if there is any criminal history record information regarding the applicant for carecheck in accordance with section 12-60-24. The results of the investigations must be forwarded to the division of children and family services of the department or to any other division as determined appropriate by the department. The applicant for placement in the carecheck registry, after satisfying requirements imposed by the department, must be placed in the carecheck registry if no relevant criminal history record information is found and no report of a determination of services required for child abuse or neglect filed pursuant to section 50-25.1-05.2 is found which would disqualify the person. The division may charge the applicant a fee not to exceed thirty dollars for the purpose of processing the application. The division is not subject to the fee imposed under section 12-60-16.9 when requesting criminal history record information from the bureau of criminal investigation. The division, within one hundred eighty days after July 1, 1991, shall provide, through a toll-free telephone line maintained by the department, a means to allow interested parents or guardians, employment agencies, or child care referral groups to determine if a person has met the requirements for placement in the carecheck registry. The division shall undertake a public awareness effort to explain the existence and purpose of the carecheck toll-free telephone line. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the costs of the fingerprinting.

50-11.1-07. Investigation of applicants, licensees, and registrants - Maintenance of records - Confidentiality of records.

1. The department and its authorized agent at any time may investigate and inspect the conditions of the facility, the qualifications of the providers of early childhood services in any early childhood facility, and the qualifications of any in-home provider seeking or holding a license or registration document under this chapter. Upon request of the department or its authorized agent, the state department of health or the state fire marshal, or the fire marshal's designee, shall inspect any facility for which a license is applied for or issued and shall report the findings to the department or the department's authorized agent.
2. Licensees and registrants shall:
 - a. Maintain such records as the department may prescribe regarding each child in their care and control, and shall report to the department, when requested, such facts as the department may require with reference to the children upon forms furnished by the department;
 - b. Admit for inspection authorized agents of the department and open for examination all records, books, and reports of the home or facility; and
 - c. Notify the parent, guardian, or custodian of each child receiving care at the facility and each employee of the facility of the process for reporting a complaint or a suspected licensing violation.
3. Except as provided in subsection 4, all records and information maintained with respect to children receiving early childhood services are confidential and must be properly safeguarded and may not be disclosed except:
 - a. In a judicial proceeding;

- b. To officers of the law or other legally constituted boards or agencies; or
 - c. To persons having a definite interest in the well-being of the child or children concerned and who, in the judgment of the department, are in a position to serve their interests should that be necessary.
4. A provider of early childhood services, upon the request of the parent or guardian of a child for whom the provider provides such services, shall make available to the parent or guardian a list of the names, telephone numbers, and addresses of the parents or guardians of children for whom early childhood services are provided. The list may only include the names, telephone numbers, or addresses of parents or guardians who grant the provider permission to disclose that information.

50-11.1-07.1. Notice. After each inspection or reinspection, the department or the department's authorized agent shall, by certified mail, send copies of any correction order or notice of noncompliance, to the early childhood facility.

50-11.1-07.2. Correction orders.

1. Whenever the department or the department's authorized agent finds, upon inspection of an early childhood facility, that the facility is not in compliance with the provisions of this chapter, or the rules and regulations promulgated thereunder, a correction order must be issued to the facility. The correction order must cite the specific statute or regulation violated, state the factual basis of the violation, state the suggested method of correction, and specify the time allowed for correction. The correction order must also specify the amount of any fiscal sanction to be assessed if the correction order is not complied with in a timely fashion. The department shall, by rule promulgated pursuant to subsection 2 of section 50-11.1-08, establish a schedule of allowable time periods for correction of deficiencies.
2. Within three business days of the receipt of the correction order, the licensee of the early childhood facility shall notify the parent, guardian, or custodian of each child receiving care at the facility that a correction order has been issued. In addition to providing notice to the parent, guardian, or custodian of each child, the licensee shall post the correction order in a conspicuous location within the facility until the violation has been corrected.

50-11.1-07.3. Reinspections. An early childhood facility issued a correction order under section 50-11.1-07.2 must be reinspected at the end of the period allowed for correction. If, upon reinspection, it is determined that the facility has not corrected a violation identified in the correction order, a notice of noncompliance with the correction order must be mailed by certified mail to the facility. The notice must specify the violations not corrected and the penalties assessed in accordance with section 50-11.1-07.5.

50-11.1-07.4. Fiscal sanctions. An early childhood facility, if issued a notice of noncompliance with a correction order, must be assessed fiscal sanctions in accordance with a schedule of fiscal sanctions established by rules promulgated pursuant to subsection 2 of section 50-11.1-08. The fiscal sanction must be assessed for each day the facility remains in noncompliance after the allowable time period for the correction of deficiencies ends and must continue until a notice of correction is received by the department or the department's authorized agent in accordance with section 50-11.1-07.6. No fiscal sanction for a specific violation may exceed twenty-five dollars per day of noncompliance.

50-11.1-07.5. Accumulation of fiscal sanctions. An early childhood facility shall promptly notify the department or the department's authorized agent in writing when a violation noted in a notice of noncompliance is corrected. Upon receipt of written notice by the department or the department's authorized agent, the daily fiscal sanction assessed for the deficiency must stop accruing. The facility must be reinspected within three working days after receipt of the notification. If, upon reinspection, it is determined that a deficiency has not been corrected, the

daily assessment of fiscal sanction must resume and the amount of fiscal sanction which otherwise would have accrued during the period prior to resumption must be added to the total assessment due from the facility. The department or the department's authorized agent shall notify the facility of the resumption by certified mail. Recovery of the resumed fiscal sanction must be stayed if the operator of the facility makes a written request for an administrative hearing in the manner provided in chapter 28-32; provided, that written request for the hearing is made to the department within ten days of the notice of resumption.

50-11.1-07.6. Recovery of fiscal sanctions - Hearing. Fiscal sanctions assessed pursuant to this chapter are payable fifteen days after receipt of the notice of noncompliance and at fifteen-day intervals thereafter, as the fiscal sanctions accrue. Recovery of an assessed fiscal sanction must be stayed if the operator makes written request to the department for an administrative hearing within ten days after the facility's receipt of the notice.

50-11.1-07.7. Disposition of fiscal sanctions. Any fiscal sanction which is collected for any violation of this chapter or of rules adopted pursuant to this chapter, must be paid into the state treasury for the general fund, after the costs of recovering the fiscal sanction are deducted therefrom.

50-11.1-07.8. Suspension of license - Notification to parent, guardian, or custodian. The department may suspend the license of any early childhood facility during an investigation of a report of child abuse or neglect at the facility conducted pursuant to section 50-25.1-05. Notwithstanding sections 50-11.1-07 and 50-25.1-11, the department shall notify the parent, guardian, or custodian of any child receiving care at the facility when the license of the facility is suspended. Upon the conclusion and disposition of the investigation of the facility, the department shall notify the parent, guardian, or custodian of the child of the disposition.

50-11.1-08. Minimum standards - Rules and regulations - Inspection by a governmental unit. The department may:

1. Establish reasonable minimum standards for the operation of early childhood facilities and the registration of in-home providers. In appropriate circumstances and upon good cause shown, specific minimum standards may be substituted by alternate, equivalent standards, approved by the department.
2. Take such action and make such reasonable rules and regulations for the regulation of early childhood services as may be necessary to carry out the purposes of this chapter and entitle the state to receive aid from the federal government.
3. Authorize a governmental unit to:
 - a. Inspect any home or facility for which a license is applied for or issued under this chapter; and
 - b. Certify to the department that the home or facility meets the requirements of this chapter and the minimum standards prescribed by the department.

50-11.1-09. Revocation of license or registration document.

1. The department may revoke the license of any early childhood facility or the registration document of any in-home provider upon proper showing of any of the following:
 - a. Any of the applicable conditions set forth in section 50-11.1-04 as prerequisites for the issuance of the license no longer exist.
 - b. The licensee or registrant is no longer in compliance with the minimum standards prescribed by the department.

- c. The license or registration document was issued upon fraudulent or untrue representation.
 - d. The licensee or registrant has violated any rules of the department.
 - e. The licensee or registrant has been guilty of an offense determined by the department to have a direct bearing upon a person's ability to serve the public as a licensee or registrant.
 - f. The licensee has been convicted of any offense and the department, acting pursuant to section 12.1-33-02.1, has determined that the licensee has not been sufficiently rehabilitated.
2. The department shall notify, in writing, the parent, guardian, or custodian of each child receiving care in the facility of the issuance of a revocation notice.

50-11.1-10. Denial or revocation of license or registration certificate - Administrative hearing. Before any application for a license or registration certificate under the provisions of this chapter may be denied or before revocation of any license or registration certificate may take place, written charges as to the reasons therefor must be served upon the applicant, licensee, or registrant. The applicant, licensee, or registrant has the right to an administrative hearing in the manner provided in chapter 28-32 if written request for the hearing is made to the department within ten days after service of the written charges.

50-11.1-11. Public agency purchase of early childhood services. No agency of state or local government may purchase early childhood services, including care provided by or in the home of a relative, unless the early childhood facility or early childhood services attendant is licensed, registered, or approved by the department.

50-11.1-11.1. Resource and referral program - Authority of department to make grants - Federal funds - Program components.

1. The department may make grants to public and private nonprofit entities for the planning, establishment, expansion, improvement, or operation of early childhood services. Public or private entities may apply to the department for funding. Applicants shall apply for such grants on forms provided by the department. Applications for grants using funds received by the state under subsection 2 must include assurances that federal requirements have been met.
2. The department shall submit an application annually to the United States secretary of health and human services for the purpose of obtaining the state's allotment of funds authorized under chapter 8 of title VI of the Omnibus Budget Reconciliation Act of 1981 [42 U.S.C. 9871-9877] or under any subsequent federal law providing funding for child care and development programs.
3. Each program must identify all existing early childhood services through information provided by all relevant public and private entities in the areas of service and must develop a resource file of the services which must be maintained and updated at least quarterly. The services must include early childhood services and service providers as defined in section 50-11.1-02.
4. Each program providing early childhood resource and referral services must establish a referral process that responds to parental needs for information, fully ensures the confidentiality of records and information as required under subsection 3 of section 50-11.1-07, affords parents maximum access to all referral information, and includes telephone referral available for no less than twenty hours per week. Each program shall publicize its services through popular media sources, agencies, employers, and other appropriate methods.

5. All early childhood services resource and referral programs must maintain documentation of the number of calls and contacts to the program. A program may collect and maintain the following information:
 - a. Ages of children served.
 - b. Time category of child care request for each child.
 - c. Special time category, such as nights, weekends, or swing shift.
 - d. The reason that the child care is needed.
6. Each program must have available, as an educational aid to parents, information on available parent, early childhood, and family education programs in the community and information on aspects of evaluating the quality and suitability of early childhood services, including licensing regulation, financial assistance availability, child abuse reporting procedures, and appropriate child development information.
7. A program may provide technical assistance to existing and potential providers of all types of early childhood services and to employers. This assistance must include:
 - a. Information on all aspects of initiating new early childhood services including licensing, zoning, program and budget development, and assistance in finding information from other sources.
 - b. Information and resources which help existing early childhood service providers to maximize their ability to serve the children and parents of their community.
 - c. Dissemination of information on current public issues affecting the local and statewide delivery of early childhood services.
 - d. Facilitation of communication between existing early childhood service providers and child-related services in the community served.
 - e. Recruitment of licensed providers.
 - f. Options, and the benefits available to employers utilizing the various options, to expand child care services to employees.
8. Services prescribed by this section must be designed to maximize parental choice in the selection of early childhood services and to facilitate the maintenance and development of such services and resources.

50-11.1-12. Violation of chapter or regulations - Injunction. The department may seek injunctive action against an early childhood facility in the district court through proceedings instituted by the attorney general on behalf of the department if:

1. There is a violation of this chapter or a rule adopted thereunder; or
2. An early childhood facility, after notice and opportunity for hearing on the notice of noncompliance, or on the resumption of the fiscal sanction, or after administrative hearing confirming and upholding the fiscal sanction does not pay a properly assessed fiscal sanction in accordance with section 50-11.1-07.6.

50-11.1-13. Penalty. Any person, partnership, firm, corporation, limited liability company, association, or organization who violates any of the provisions of this chapter is guilty of a class B misdemeanor.

50-11.1-13.1. Penalty for provision of services - When applicable. A person who provides early childhood services to any child, other than a child who is a member of that person's household, is guilty of a class B misdemeanor if:

1. Those services are provided after that person is required to register under section 12.1-32-15;
2. The department has denied that person's application for licensure or registration to provide early childhood services or has revoked that person's license or certificate of registration to provide early childhood services following a finding that services are required under chapter 50-25.1 and that finding has become final or has not been contested by that person; or
3. The person allows another person to be in the presence of the child receiving the services if that other person is required to register under section 12.1-32-15 or has had an application for licensure or registration to provide early childhood service denied by the department following a finding that services are required under chapter 50-25.1 and that finding has become final or has not been contested by that other person.